

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,

That

SECTION 1. Title.

This Act may be cited as the "Consular Notification Compliance Act."

SECTION 2. Purpose and statement of authority.

(a) The purpose of this Act is to facilitate compliance with Article 36 of the Vienna Convention on Consular Relations of 1963, entitled "communication and contact with nationals of the sending State," and any comparable provision of a bilateral agreement addressing consular notification and access.

(b) This Act is enacted pursuant to authority contained in Articles I and VI of the Constitution of the United States of America.

SECTION 3. Consular notification and access.

(a) If a person who is not a United States citizen is detained or arrested by a federal, state, or local official, the arresting or detaining official, or other appropriate federal, state, or local official, shall notify that person without delay that he or she may request that his or her consulate be notified of the detention or arrest.

(b) The consulate of the person detained or arrested shall be notified without delay if a person requests consular notification under subsection (a) of this section, and any

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other consular notification required by treaty or other international agreement shall likewise be provided. Where notification has not previously been provided for persons detained pending criminal charges, such notification shall occur no later than the first appearance before the court with jurisdiction over the charge.

(c) Any federal, state, or local law enforcement officer or other official in charge of a facility where a person who is not a citizen of the United States is held following detention or arrest shall reasonably ensure that the person detained or arrested is able to communicate freely with, and be visited by, officials of his or her consulate, consistent with the obligations referenced in section 2(a) of this Act.

(d) Nothing in this section is intended to create any judicially enforceable right or benefit, substantive or procedural, by any party against the United States, its departments, agencies, or any other entities, its officers or employees, or any other person or entity, including, but not limited to, state and local law enforcement officers and agencies.

SECTION 4. Petition for review.

(a)(1) Notwithstanding any other provision of law, ^{on the date of enactment of} this Act and thereafter ^{a federal court shall have jurisdiction to review the merits of a} petition claiming a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, or a comparable provision of a bilateral agreement addressing consular notification and access, filed by a person convicted and sentenced to death by any federal or state court prior to the date of enactment of this Act.

(2) To obtain relief, a person described in paragraph (a)(1) must make a showing of actual prejudice to the criminal conviction or sentence as a result of the violation. The court may conduct an evidentiary hearing if necessary to supplement the record and, upon a finding of actual prejudice, shall order ~~a new trial or sentencing proceeding~~.

(3)(A) A petition for review under this section must be filed within one year of the later of—

(i) the date of enactment of this Act;

(ii) the date on which the petitioner's federal or state court judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; or

(iii) the date on which the impediment to filing a petition created by federal or state action in violation of the Constitution or laws of the United States is removed, if the petitioner was prevented from filing by such federal or state action.

(B) The time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward the one-year period of limitation.

(4) A petition for review under this section must be part of a petitioner's first federal habeas corpus application or motion for federal collateral relief under chapter 153 of title 28, United States Code, except that if a petitioner has already filed a federal habeas corpus application or motion for federal collateral relief at the time of enactment

of this Act or if such application must be filed prior to one year after the date of enactment of this Act, such petition for review under this section must be filed within one year of the enactment date or within the period prescribed by paragraph (3)(A)(iii), whichever is later. No petition filed in conformity with the requirements of the preceding sentence shall be considered a second or successive habeas corpus application or subjected to any bars to relief based on pre-enactment proceedings other than as specified in paragraph (2) of this subsection.

(b)(1) A person not covered by subsection (a) of this section who is arrested, detained, or held for trial on a charge that would expose the person to a capital sentence if convicted may raise a claim of a violation of Article 36(1)(b) or (c) of the Vienna Convention on Consular Relations, or of a comparable provision of a bilateral agreement addressing consular notification and access, at a reasonable time after the person becomes aware of the violation, before the court with jurisdiction over the charge. Upon a finding of such a violation --

(A) the person's consulate shall be notified immediately by the detaining authority, and consular access to the person shall be afforded in accordance with the provisions of the Vienna Convention on Consular Relations or the comparable provisions of a bilateral agreement addressing consular notification and access; and

(B) the court shall postpone any proceedings to the extent it finds it necessary to do so to allow for adequate opportunity for consular access and assistance, and may also

enter necessary orders to facilitate such access and assistance. Nothing in this subsection shall be construed to create any additional remedy.¹

(C) The court may conduct evidentiary hearings if necessary to resolve factual issues.

SECTION 5: Definitions.

In this Act --

(a) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or their subdivisions, and territories or possessions of the United States.

(b) "Law enforcement officer" has the meaning given that term in section 2510(7) of title 18, United States Code.

¹ We anticipate then elaborating in the legislative history that this legislation is not intended, except as explicitly provided, to enhance or diminish legal remedies available for VCCR violations.